

WTH-CV23-6011380-S : SUPERIOR COURT
SUPERIOR PROPERTY GROUP, LLC : J. D. OF WATERBURY
V. : AT WATERBURY HOUSING SESSION
ALEXIS BARNETT-MORENO : APRIL 4, 2023

ANSWER AND SPECIAL DEFENSES

1. With regard to the allegation in paragraph 1, the Defendant leaves the Plaintiff to its proof.
2. The Defendant admits the assertion made in Paragraph 2.
3. The Defendant admits the assertion made in Paragraph 3,
4. The Defendant admits the assertion made in Paragraph 4.
5. The Defendant admits the assertion made in Paragraph 5.
6. The Defendant admits the assertion made in Paragraph 6.
7. The Defendant admits the assertion made in Paragraph 7.

SPECIAL DEFENSES

I. SPECIAL DEFENSE ONE: CONDITIONS ISSUES

Summary process actions cannot prevail where they are undertaken as retaliation for a tenant's proper exercising of his/her right to contact municipal authorities regarding health and safety concerns. *See Conn. Gen. Stat. § 47a-33: Defense that Action is Retaliatory* ("it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means, including contacting officials of the state or of any town, city, borough or public agency . . . any condition constituting a violation of . . . the housing or health ordinances of the municipality wherein the premises which are the subject of the complaint lie").

In support of this special defense, the Defendant asserts the following:

1. The Defendants moved from Colorado Springs, Colorado to the subject premises on or about November 15, 2022, a week before the Thanksgiving holiday.
2. When the Defendants arrived to the subject premises after their long drive from Colorado, they encountered habitability issues at the subject premises.
3. The subject premises did not have water.
4. The upstairs bathroom of the subject premises was unfinished. The bathroom had unattached/unsecured fixtures and a hole in the exterior wall.
5. According to historical data from the National Weather Service, the observed high temperature was forty-three degrees Fahrenheit and low temperature was twenty-three degrees Fahrenheit for November 15, 2022.¹
6. The Defendants contacted the Plaintiff to request that the Plaintiff, at least, address the lack of water as soon as possible.
7. The Plaintiff's response to the repair request was that the soonest the repair to the water could be made was on or about November 17, 2022.
8. The Plaintiff did not address the lack of water in the tenancy until approximately four days later, on or about November 19, 2022.
9. The Defendants' family accessed water at Defendant Alexis Barnett-Moreno's aunt's house until there was water in the subject premises.
10. The Defendants purchased a washing machine and dryer. The washing machine and dryer were delivered to the subject premises on or about November 28, 2022. The washing machine and dryer could not be connected to aged and/or loose-fitting pipes.

¹ National Weather Service historical data for November, 2022, Meriden Markham Municipal AP CT. See <https://www.weather.gov/wrh/Climate?wfo=okx>.

11. On or about November 28, 2022, the Defendants contacted the Plaintiff to request repairs so that the Defendants may connect and use the washing machine and dryer.
12. The Plaintiff did not make the requested repairs to aged and/or loose-fitting pipes until on or about December 9, 2022.
13. The subject premises had a hole in the exterior bathroom wall until it was repaired, approximately three weeks later, on or about December 6, 2022.
14. From the initial repair request by the Defendants on or about November 15, 2022 to when the hole in the exterior bathroom wall was repaired on or about December 6, 2022, the Plaintiff communicated to the Defendants that the hole would be repaired.
15. The hole in the exterior bathroom wall was repaired after the Defendants contacted the Town of Naugatuck Health Department.
16. In early March, 2023, there was an electrical fire on the subject premises in the garage. The Defendants were told by the Town of Naugatuck Fire Marshal that the electrical fire may have been caused by the Plaintiff connecting a new garage door opener to an existing electrical outlet.
17. The Defendants have contacted the Town of Naugatuck Health Department on multiple occasions since the Defendants took possession of the premises on or about November 15, 2022.

II. SPECIAL DEFENSE TWO: RETALIATORY EVICTION

Summary process actions cannot prevail where they are undertaken as retaliation for a tenant's proper exercising of his/her right to contact municipal authorities regarding health and safety concerns. *See Conn. Gen. Stat. § 47a-20: Retaliatory Action by Landlord Prohibited* ("A landlord shall not maintain an action or proceeding against a tenant to recover possession of a

dwelling unit . . . within six months after . . . (1) [t]he tenant has in good faith attempted to remedy by any lawful means, including contacting officials of the state or of any town [or] city . . . any condition constituting a violation of . . . the housing and health ordinances of the municipality wherein the premises which are the subject of the complaint lie”) and Conn. Gen. Stat. § 47a-33: Defense that Action is Retaliatory (“it shall be an affirmative defense that the plaintiff brought such action solely because the defendant attempted to remedy, by lawful means, including contacting officials of the state or of any town, city, borough or public agency . . . any condition constituting a violation of . . . the housing or health ordinances of the municipality wherein the premises which are the subject of the complaint lie”).

Where a summary process action has been brought against a tenant within six months of said tenant’s raising a health code violation with city officials, the Defendant is entitled to a rebuttable presumption that the summary process action was retaliatory. *See Visco v. Cody*, 16 Conn. App. 444, 450 n. 7 (1988). Once a *prima facie* case of retaliatory eviction has been established under Conn. Gen. Stat. § 47a-20, the Plaintiff is “limited to rebutting the presumption [that the summary process action is retaliatory] using one of the four enumerated grounds in [Conn. Gen. Stat.] § 47a-20a.” *Holdmeyer v. Thomas*, 167 Conn. App. 544, 548 (2016) (*quoting Correa v. Ward*, 91 Conn. App. 142, 148 (2005)). These grounds are as follows: “(1) The tenant is using the dwelling unit for an illegal purpose or for a purpose which is in violation of the rental agreement or for nonpayment of rent; (2) the landlord seeks in good faith to recover possession of the dwelling unit for immediate use as his own abode; (3) the condition complained of was caused by the willful actions of the tenant or another person in his household or a person on the premises with his consent; or (4) the landlord seeks to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant before

the tenant's complaint.” Conn. Gen. Stat. § 47a-20a. The Plaintiff is foreclosed from relying on any grounds other than those enumerated in the statute. *See Correa*, 91 Conn. App. at 147 (“any ground not enumerated in § 47a–20a is . . . inadequate to rebut the presumption”); *see also Holdmeyer*, 167 Conn. App. at 549.

In support of this special defense, the Defendant asserts the following:

1. Incorporate all allegations from Special Defense One, paragraphs one through seventeen.
18. The Defendants took possession of the subject premises pursuant to a written lease agreement on or about November 15, 2022.
19. Since on or about November 15, 2022 to the present, the Defendants requested that the Plaintiff make repairs to the subject premises, including addressing a lack of water and an opening in an exterior bathroom wall.
20. The Plaintiff did not address serious conditions concerns in an expedient and timely manner.
21. The Defendants contacted the Town of Naugatuck Health Department to address premises conditions issues.
22. The Defendants contacted the Town of Naugatuck Health Department on or about early December, 2022, prior to the initiation of this current action.
23. The Plaintiff initiated this summary process action by service of the Notice to Quit on the Defendants, on or about January 31, 2023.
24. The Plaintiff initiated this summary process action within six months of the Defendants’ good faith attempts to remedy conditions issues in the subject premises, which included contacting Town of Naugatuck officials.

III. SPECIAL DEFENSE THREE: EQUITABLE DOCTRINE AGAINST FORFEITURE

Per Conn. Gen. Stat. §§ 52-1 and 47a-33a, a Defendant in a summary process proceeding has the right to “present any affirmative . . . equitable defense.” *See also Fellows v. Martin*, 217 Conn. 57, 66-67 (1991) (“equitable defenses and counterclaims implicating the right to possession are available in a summary process proceeding”); *Housing Authority of City of Stamford v. Morrow*, 1995 WL 348025, at *7 (Conn. Super. Ct. 1995) (“the equitable doctrines of *Fellows v. Martin*[] apply to summary process other than non-payment”). “Equitable principles barring forfeitures may apply to summary process actions if: (1) the tenant’s breach was not [willful] or grossly negligent; (2) upon eviction the tenant will suffer a loss wholly disproportionate to the injury to the landlord; and (3) the landlord’s injury is reparable.” (Internal quotation marks omitted) *19 Perry Street, LLC v. Unionville Water Co.*, 294 Conn. 611, 630, 987 A.2d 1009 (2010). If the Defendant loses their housing, “...he shall suffer an enormous loss wholly disproportionate to the injury to the other party.” *See Fellows v. Martin*, 217 Conn. 57, *supra*, 66 (1991). This Court has the authority to enter judgment in favor of the Defendant pursuant to the exercise of its equitable powers. *See Conn. Gen. Stat. § 52-1* (“The Superior Court may administer . . . and apply . . . equitable remedies in favor of either party”).

In support of this special defense, the Defendant asserts the following:

1. Defendant Richard Moreno is an honorably discharged veteran of the United States Marine Corps. He served in Kuwait and Iraq during the outset of the Iraq War in 2003.
2. Defendant Richard Moreno has disabilities due to his military service.

3. The Defendant's household consists of five members: her husband and co-defendant Richard Moreno; three minor children including their sixteen-year-old daughter, fourteen-year-old son, and four-year-old daughter; and two pets, a cat and a dog.
4. The Defendants recently moved from Colorado Springs, Colorado to the subject premises on or about November, 2022.
5. The Defendants moved from Colorado to Connecticut to be closer to a family member who was experiencing a serious medical situation.
6. Defendant Richard Moreno experienced an unexpected period of unemployment from on or about late 2022 through on or about March 20, 2023. He expected to begin his new job months earlier. However, Defendant Richard Moreno was unable to begin his new job until on or about March 20, 2023.
7. Due to Defendant Richard Moreno's loss of employment, the Defendants fell into non-payment for the subject premises.
8. The Defendants' financial circumstances have significantly improved. Non-payment of rent can be remedied in-full and the Plaintiff can be made whole.
9. Defendant Alexis Barnett-Moreno has a pending UniteCT Eviction Prevention Fund (UniteCT EPF) application, case no. 606927.
10. On or about March 29, 2023, UniteCT EPF issued a pre-qualification letter indicating that Defendant Alexis Barnett-Moreno may be eligible for up to \$5,000.00 in rental arrearage assistance.
11. Both Defendants maintain full-time employment. Defendant Alexis Barnett-Moreno is employed as a behavioral therapist. She works with special education students at a local

public school. On or about March 20, 2023, Defendant Richard Moreno began new full-time employment as an insurance agent for a national insurance company.

12. In concert with UniteCT EPF rental assistance, the Defendants have the ability to repay the rental arrearage in-full.

13. Should the Plaintiff retake possession of the subject premises, the Defendants' three minor children will likely again be traumatically uprooted from new schools and social networks.

14. Defendant Richard Moreno maintains remote employment as an insurance agent. His employment, income, and family's financial and housing stability rest on his ability to steadily and consistently work from home.

15. The Defendants are working with VA social workers and Supportive Services for Veteran Families ("SSVF") organization The Workplace ("Workplace") to find a way to resolve this issue.

16. The Defendants have been unable to find and afford market-rate housing and do not have anywhere else to live.

17. The Defendants' household will likely be separated should they need emergency shelter.

CONCLUSION

Wherefore, the Court should deny possession to the Plaintiff based on all and any of the Answer and Special Defenses.

THE DEFENDANT
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CERTIFICATION

This is to certify that on April 4, 2023 a copy of the foregoing was served electronically to all counsel and self-represented parties:

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